IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1841 OF 2005

Anand S. Bhatt ...Petitioner

Versus

India Cements Capital & Finance Ltd. & Anr ...Respondents

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Mr. K.G. Menon, Sr. Adv. i/b Jayant L. Phoujdar, Advocate for Petitioner

Mr. A.S.Khan i/b A.S. Khan & Associates, for Respondent No.1.

Mr.S.R. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 6TH OCTOBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioner, learned advocate for the respondent no.1 i.e. original complainant and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case No.4232/S/2003 which is pending in the Court of learned Additional C.M.M. 47th Court, Esplanade, Mumbai. In the said case, process has been issued against the petitioner under Sections 406. 420 r.w. 34 and 120-B of I.P.C.

3. It may be stated here that the petitioner had preferred revision bearing No. 958 of 2004 before the Sessions Court for setting aside the order of issuance of process. The learned Judge by order dated 30.4.2005 dismissed the revision on the ground that it was not maintainable as according to the learned Sessions Judge, the only remedy available to the petitioner-accused to challenge the order of issuance of process was by invoking the provisions of Section 482 of Cr.P.C.

4. However, for the reasons recorded in the decision of this Court in the case of **V.K. Jain & Ors. Vs. Pratap Vs. Padode and Anr, reported in 2005(3) Mh.L.J. 778,** in my opinion, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process. In view of the decision of this Court in the case of V.K. Jain (supra), the order of the learned Sessions Judge dated 30.4.2005 is clearly erroneous and required to be set aside. Accordingly the said order is set aside. Revision No. 958/2004 is restored to file. The learned sessions Judge shall hear the parties afresh and thereafter dispose of the said revision on merits.

5. In the meanwhile, interim stay granted by this Court is extended till the end of November, 2005. Both parties have agreed to appear before the Sessions Court on 21.11.2005.

6. Writ Petition is disposed of.

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